JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition and Appendix C thereto is an accurate reproduction of the petitioners' "Appellees' Petition for Rehearing" as filed with the Indiana Supreme Court on March 25, 1966 which was denied on May 5, 1966.

QUESTIONS PRESENTED

Under this heading, the Petition contains but a single question which, as stated by Petitioners, reads as follows:

> "Whether a state appellate court can, consistent with the due process requirements of the Fourteenth Amendment, deny a trial of federal constitutional issues turning on factual presentations by directing the entry of final judgment in the course of an interlocutory review of a temporary injunction."

At first glance, the "Question Presented" as above stated by Petitioners, appears to be substantial. Noteworthy is the absence of any question taking issue with the substantive holding of the Indiana Supreme Court by its Opinion dated May 19, 1966. In reality, Petitioners' question is not substantial and is a uniquely narrow claim concerning Indiana procedural law. Because the "Question Presented," as stated by Petitioners, wrongly implies that the Indiana Supreme Court decided federal constitutional issues without any trial at all, Respondents feel compelled to clarify the issue sought to be presented by the Petitioners by framing the "Questions Presented" in the following language:

> 1. In injunction proceedings pending in state courts, does the due process of law clause of the

Fourteenth Amendment require that there be a *second* hearing on the issues stated in the complaint when the petitioners had one hearing at which they were afforded the opportunity without restriction to submit evidence, which resulted in a transcript of evidence containing more than 1300 pages of affidavits and exhibits?

2. In injunction proceedings pending in state courts, does the due process of law clause of the Fourteenth Amendment require that there be a *second* hearing on the issues stated in the complaint for the purpose of introducing evidence *in addition* to that which was introduced at the *first* hearing, when the petitioners *waived* the right to introduce additional evidence *by requesting that the Supreme Court of Indiana decide the case upon the merits upon the basis of the evidence submitted at such first hearing?*

3. Does the due process of law clause of the Fourteenth Amendment require a *further* hearing for the opportunity to submit *additional* evidence in a trial court after the Supreme Court of a state has ruled upon the merits of a claim of unconstitutionality, which ruling was *at the specific request* of the party asserting such claim of unconstitutionality of a statute upon an appeal from the granting of a temporary injunction restraining its enforcement?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to that clause of the 14th Amendment to the Constitution of the United States which appears in the Petition under this heading, the following statutes of Indiana, or parts thereof, may be considered to be involved and are set forth herein verbatim as follows:

Burns IND. STAT. ANN., Vol. 2, Part 2 (1946 Replacement) Sec. 3-2102 at page 1012 of Burns IND. STAT. ANN., *supra:*

> "When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering some act to be done, in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual; or when such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment,—an injunction may be granted to restrain such act or proceedings until the further order of the court; which may, afterward, be modified upon motion. And when it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens or is about to remove or dispose of his property, with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property. [Acts 1881 (Spec. Sess.), ch. 38, § 178, p. 140.]"

Sec. 3-2103 at page 1018 of Burns IND. STAT. ANN., *supra*:

> "In all applications for an injunction, the complaint, or so much thereof as pertains to the acts or proceedings to be enjoined, shall be verified by affidavit. The injunction may be granted at the time of commencing the action, or at any time afterward

before judgment in that proceeding. [Acts 1881 (Spec. Sess.), ch. 38, § 179, p. 240.]"

Sec. 3-2104 at page 1018 of Burns IND. STAT. ANN., *supra*:

> "No injunction shall be granted until it shall appear to the court or judge granting it that some one or more of the opposite parties concerned has had reasonable notice of the time and place of making the application, except that in cases of emergency, to be shown in the complaint, the court may grant a restraining order until notice can be given and hearing thereon. [Acts 1881 (Spec. Sess.), ch. 38, § 180, p. 240.]"

Sec. 3-2105 at page 1019 of Burns IND. STAT. ANN., *supra*:

> "On the hearing of an application for a restraining order or temporary injunction, each party may read affidavits or documentary or record evidence. [Acts 1881 (Spec. Sess.), ch. 38, § 181, p. 240.]"

STATEMENT

Petitioners commenced their action in the Superior Court of Marion County, Indiana, Room No. 3 on May 13, 1964. The hearing on the temporary injunction was held on September 23, 1964, at which time the great bulk of the seven (7) volume, thirteen hundred (1300) page transcript of evidence was introduced and submitted to said trial court. On said date, a total of forty-six (46) exhaustive, detailed and technical affidavits or exhibits were submitted by Petitioners allegedly in support of all of the claims made by them in their complaint, together with a copy of

Public Law 88-108 and defendants on said date submitted a total of ten (10) affidavits or exhibits, all of which were subject to the right of any of the parties to object to the admissibility thereof.

At the September 23, 1964 hearing, the trial court granted all parties twenty-one (21) days within which to make or file objections to evidence already submitted and within which to introduce rebuttal evidence.

On October 14, 1964, Respondents filed written objections to certain of the Petitioners' evidence and also on said date the Petitioners introduced into evidence eight (8) rebuttal affidavits or exhibits and the Respondents introduced into evidence five (5) rebuttal affidavits or exhibits.

The subject matter of this mass of documentary evidence was as broad in scope as the issues raised by the Petitioners' Complaint and concerned not simply the then unresolved issue of federal pre-emption, which was finally decided by this Honorable Court on January 31, 1966 in *Brotherhood of Locomotive Engineers v. Chicago, R. I. & P. R. Co.*, 382 U.S. 423. Such evidence also covered the issues presented with respect to the present fact pattern of the operation of the railroad industry and dealt in detail with the various functions of the crew members of a train crew, the technological advances which had occurred in railroad equipment since the enactment of Indiana's so-called Full Crew Law (Indiana Acts 1937, ch. 58, Burns IND. STAT. ANN., §§ 55-1326 to 55-1338) and evidence of the additional amount of money required to be expended by the Petitioners to comply with said Indiana law.

This mass of evidence having been before the trial court since October 14, 1964, said court on February 3, 1965

halted the enforcement of the 1937 Indiana Full Crew Statute and made the following Entry:

"The Court, being duly advised now:

1. Overrules the demurrer to the plaintiffs' amended complaint filed by the defendants on June 19, 1964, and rules the defendants and intervening defendants to answer on or before February 16, 1965.

2. Overrules all objections both oral and written made in this cause, including those made at the hearing on the application for a temporary injunction and within 21 days thereafter, as to any of the affidavits, exhibits, the verified amended complaint and all other evidence offered respecting the issuance of a temporary injunction.

3. Orders admitted and read into evidence all of the affidavits, exhibits, the verified amended complaint and its exhibits, and all other evidence offered by the plaintiffs, the defendants and the defendant intervenors at the hearing on plaintiffs' application for a temporary injunction, being Plaintiffs' Exhibits A and B-1 through R, inclusive, Defendants' Exhibits 1 and 2, and Defendant Intervenors' Exhibits 1 through 8, inclusive.

4. Orders admitted and read into evidence all of the affidavits, exhibits, and all other evidence offered by the plaintiffs, the defendants, and the defendant intervenors within 21 days after the hearing on plaintiffs' application for a temporary injunction, being Plaintiffs' Rebuttal Exhibits A through H, inclusive, and the Defendants' Rebuttal Exhibits 1 through 5, inclusive.

5. Takes judicial notice of the statutes set forth in Plaintiffs' Notice of Intention to Request the Taking of Judicial Notice filed in this cause on June 19, 1964.

6. Takes judicial notice of the matters set forth in defendant intervenors Request for Court to Take Judicial Notice filed in this cause on October 14, 1964.

Temporary injunction granted. Bond fixed at $5,000.00. Undertaking approved and filed. Send cards."

REASONS FOR NOT GRANTING THE WRIT

Summary of Argument

I

Petitioners' due process question is insubstantial, in that they have chosen not to challenge the correctness of the Indiana Supreme Court decision upon the merits of the substantive constitutional questions raised and which were (as admitted by the Petition, p. 3) finally determined by the Indiana Supreme Court, which decision was "subject to review by this Court."

II

Petitioners' due process question is insubstantial, in that they have not shown or alleged that there is any evidence in addition to that submitted by them at the first hearing which is unlike such previously submitted evidence or that there is any newly discovered evidence (not available or known to Petitioners at the time of the first hearing) which would require a different conclusion upon the merits of their claims.

III

Although the Petitioners' Petition for Rehearing filed with the Indiana Supreme Court asserted (Petition p. 30a):

"In ignoring the virtually *uncontradicted evidence revealed by the record* respecting the mechanical and electronic revolution occurring in modern railroading, . . .", Petitioners now claim that they were denied any trial at which to submit evidence. (Our Emphasis)

IV

Instead of ignoring the evidence in the record, in reaching its final decision the Indiana Supreme Court took cognizance of, and accepted at face value the evidence submitted by Petitioners and made it plain in its opinion (Petition p. 9a) that it had not ignored such evidence.

V

As admitted on page 13 of the Petition, Petitioners urged the Indiana Supreme Court to make final disposition of this case on the merits by stating in their brief:

> ". . . Because of the importance of the issues presented, this Court should determine the *constitutionality* of this law *now* as it has done in other cases involving the appeal of a temporary injunction." (Our Emphasis)

Contrary to Petitioners' claim at the bottom of page 13 of their Petition, the above request was not limited to the federal pre-emption question but extended to the overall question of the constitutionality of the Indiana Full Crew Law upon the "issues presented." Petitioners may not invite error and then complain of it. (Our Emphasis)

VI

By reason of the fact that the trial court had on February 3, 1965 halted the enforcement of the 1937 Indiana Full

Crew Law without a finding that its action was based solely upon the Petitioners' claim of federal pre-emption, thereby, for practical purposes, having overruled this Honorable Court's decisions in cases such as that of *Missouri Pacific Railway Co. v. Norwood* (1931), 283 U.S. 249 and in other similar cases, the Indiana Supreme Court was justified in assuming that the trial court had found the Indiana Full Crew Law to be unconstitutional upon all of the bases urged by the Petitioners in their complaint.

ARGUMENT

I

It is particularly noteworthy that the challenge of the Petitioners to the May 19, 1966 decision and opinion of the Indiana Supreme Court is directed only to the very narrow asserted claim that said decision and opinion has deprived them of the opportunity to submit more evidence in addition to that already in the seven (7) volume, thirteen hundred (1300) page transcript now on file with this Honorable Court. Obviously, if the only issue and evidence to be considered by the Indiana Supreme Court related solely to the federal pre-emption question, there would have been no reason to have incumbered the transcript with such a mass of evidence relating to all of the bases for asserted unconstitutionality of the Indiana Full Crew Law as claimed in Petitioners' complaint.

Although the Petitioners on page 3 of their Petition state that it is unquestionable that a final judgment subject to review by this Honorable Court has been entered, nevertheless they have not challenged the correctness of the Indiana Supreme Court decision upon the merits of the substantive constitutional questions raised by them. This is some indication of the insubstantial character of the due process question and that Petitioners' tactics are those of further delay and of securing more time at a second hearing in the trial court at which they can add further evidence to the massive transcript already in existence in this case, so as to have a better factual record to support their claims for later submission to the Indiana Supreme Court and possibly to this Honorable Court.

Although the last sentence of the Petitioners' Petition on page 15 states that the procedure or action in this case is unprecedented, on the other hand, the very case cited by them on the finality of the judgment is itself some precedent. In *Board of Commissioners, etc. v. Lucas, Treasurer* (1876), 93 U.S. 108, the Circuit Court of Tippecanoe County, Indiana had granted a temporary injunction as prayed in a verified complaint, the granting of which was appealed to the Indiana Supreme Court which reversed the lower court and remanded the cause to that court with instructions to dismiss the complaint. On pages 113 and 114 of 93 U.S., this Honorable Court speaking through Mr. Justice Field stated:

> "It is objected, *in limine,* that this court has no jurisdiction of the cause, on the alleged ground that the judgment rendered is not a final judgment. The order of the Circuit Court, granting a preliminary injunction, was, it is true, interlocutory, and, if the judgment of the Supreme Court of the State had been limited to a simple reversal, the objection would have been tenable. The cause would then have remained in the Circuit Court for further proceedings. But the direction to that court, accompanying the reversal of its order to dismiss the complaint, made a final disposition of the cause. With the entry of that judgment the cause was at an end. With the peculiarities of the practice of the Indiana courts we have nothing to do. *If, upon an appeal from an interlocutory order, a final disposition of the merits of a cause can be made in that State, it is no concern of ours.* If, by any direction, the entire cause is, in fact, determined, the decision, when reduced to form and entered in the records of the court, constitutes a final judgment, subject in a proper case to our review, whatever may be its technical designation. The course adopted in this

> case was evidently pursued, from the fact that the whole merits of the controversy had been considered on the motion for the preliminary injunction. The application was founded upon the alleged invalidity of the act of 1872; no other matter was discussed, and all objections of form in the proceeding were waived, that the validity of the act might be considered and determined. Being determined against the view advanced by the plaintiffs, the cause, so far as the State courts were concerned, was practically at an end. . . ." (Our Emphasis)

Petitioners' situation is wholly unlike the case relied upon by them, i.e., *Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U.S. 673 (1930); in that case, because the state court had overruled a consistent line of procedural decisions with the retroactive effect of denying the litigant a hearing in that case because it was then "too late for the plaintiff to avail itself of the newly found remedy," this Honorable Court held that such state court action deprived the litigant of due process of law "in its primary sense of an opportunity to be heard and to defend [his] substantive right." On the other hand, in the present Petitioners' case, they have had a hearing and introduced evidence. Moreover, there is no statute of limitations involved, so that facts not established in the present record and the changes in the railroad industry still occurring which would require a different result in the decision by the Supreme Court of Indiana could always be pleaded to constitute the basis for a subsequent cause of action.

II

It is fundamental that an alleged error in judicial proceedings is not the basis upon which to reverse a decision of an inferior court unless the complainant shows that it

has been prejudiced by such alleged error. In neither their Petition for Rehearing filed with the Indiana Supreme Court, nor in their Petition for a Writ of Certiorari filed with this Honorable Court do Petitioners show or even allege in what manner additional evidence will operate to result in a different decision.

Furthermore, in both their Petition for Rehearing filed with the Indiana Supreme Court and their Petition filed with this Honorable Court, the Petitioners have failed to show or allege what additional evidence or proof of facts can be made by them at a second hearing, which evidence or proof has not already been submitted or made at the first hearing and which would require a different conclusion upon the merits of their claim.

III

The Petitioners by the allegations of their Petition for Rehearing and those in their Petition filed with this Honorable Court have contradicted themselves. By the latter Petition, the Petitioners are claiming that the issues require the development of factual proofs (impliedly not yet proven) regarding the nature and extent of the changed circumstances achieved through technological developments of modern railroading since the enactment of the 1937 Indiana Full Crew Law. However, the seven (7) volume transcript of evidence already adduced is in large part devoted to evidence submitted by the Petitioners in their effort to prove the very developments and changes upon which their complaint was based in part. However, their Petition for Rehearing filed with the Indiana Supreme Court was upon the basis that the court had ignored "the virtually uncontradicted evidence revealed by the record"

(Petition p. 30a) on this very claim of changes occurring in modern railroading since the enactment of the 1937 Indiana Full Crew Law. They know of the vast amount of evidence submitted and cannot now conscientiously assert that they had no opportunity to submit evidence on such basis, nor that the Indiana Supreme Court's decision was based upon a record devoid of evidence on such basis.

IV

Petitioners unfairly accuse the Indiana Supreme Court of having ignored their evidence of changed circumstances and state on page 10 of their Petition:

> ". . . When a litigant asserts that changed circumstances since the passage of a statute have rendered its continued enforcement against him unconstitutional, the state courts are obliged to consider the evidence bearing on those circumstances. *Nashville, C. & St. L. Ry. v. Walters,* 294 U.S. 405 (1935). If due process was denied in *Walters,* when evidence of changed circumstances was ignored, then surely due process has been denied to the Petitioners by the denial of the very trial at which they would adduce their evidence of changed circumstances."

That the *Walters* case, *supra,* is inapplicable to the Petitioners' case is seen by a comparison between what the Supreme Court of Tennessee did and said in the former case with what the Supreme Court of Indiana did and said in the instant case. In the *Walters* case, *supra,* at page 414 and 415 of 294 U.S. (1935), Mr. Justice Brandeis stated:

> ". . . The Supreme Court *declined to consider* the special facts relied upon as showing that the order, and the statute as applied, were arbitrary and unreasonable; and did not pass upon the question

> whether the evidence sustained those findings. It held that the statute was, upon its face, constitutional; that when it was passed the State had, in the exercise of its police power, authority to impose upon railroads one-half of the cost of eliminating existing or future grade crossings; *and that the Court could not* 'any more' *consider* 'whether the provisions of the act in question have been rendered burdensome or unreasonable by changed economic and transportation conditions,' than it 'could consider changed mental attitudes to determine the constitutionality and enforceability of a statute. . . .'" (Our Emphasis)

By contrast, the Indiana Supreme Court did not "ignore" the evidence of changed circumstances. Instead, the Indiana Court both considered and accepted the Petitioners' evidence in the most favorable light possible and made it clear that it had done so by stating in its opinion (Petition p. 11a, last paragraph) as follows:

> "In arriving at a determination of the issues involved in the case at bar *we take cognizance of, and accept at face value, the appellees statements that they have made great technological advancements and that the evidence revealed that these operating changes in railroading were occurring in Indiana all during the period between 1937 and the date suit was filed in the instant case and that these changes are still occurring. . . .*" (Our Emphasis)

Although the Petitioners' criticism of the decision and opinion by the Indiana Supreme Court is characterized by them as being upon the basis that it was essential "to vindicate their federal constitutional rights that the fullest possible evidentiary record be assembled, tested by cross-examination," (Petition pp. 10, 11), one may ponder what

the application of such a standard might produce in this case and when the "fullest *possible* evidentiary record" would ever be completely assembled to the extent that no more evidence could be added thereto. Also, Petitioners do not explain why they would need to cross-examine their own witnesses or how they could strengthen their case, which must stand on its own merits and not on the weakness of the Respondents' opposition.

Although characterized by Petitioners' counsel as being a decision which the Indiana Supreme Court could not make because that court had ignored the facts or because it was not based upon the fullest possible development of facts, it would seem that in reality it is the legal conclusions which the Indiana Supreme Court reached, upon the basis of the facts presented to it, of which conclusions the Petitioners should have complained, since the decision of the court is admittedly a final judgment. *However, Petitioners have not questioned such legal conclusions and have now waived the right to do so.*

V

This is not a situation in which on the date of the filing of the complaint (May 13, 1964) the Petitioners hastily submitted a minimum amount of preliminary evidence so as to entitle them to immediate emergency relief. They made no such presentation of evidence at that time. Instead, the hearing was not held until September 23, 1964, thus affording Petitioners considerable time after the filing within which to prepare their case. The extent of their preparation may be seen merely by a glance at the seven (7) volumes of evidence, consisting of some thirteen hundred (1300) pages, most of which was submitted by Petitioners. That the trial court accorded the Petitioners due

process is further attested by the fact that the parties were given twenty-one (21) days after the September 23, 1964 hearing within which to make or file objections to evidence already submitted and within which time to introduce rebuttal evidence. Such objections and evidence were presented to the trial court on October 14, 1964.

Having gained the advantage of a temporary injunction on February 3, 1965, the Petitioners then felt confident of the sufficiency of the record which had been made in the trial court and, as admitted on page 13 of the Petition, urged the Indiana Supreme Court to determine the constitutionality of the law upon the appeal from the granting of the temporary injunction because of the importance of the issues presented.

This Honorable Court has recognized the power of an appellate court to do this very thing, for in the case of *North Carolina Railroad Company v. Story, et al.*, on page 292 of 268 U.S. Mr. Chief Justice Taft, speaking for the Court, stated:

> ". . . By the ordinary practice in equity as administered in England and this country an appellate court has the power on appeal from a temporary or interlocutory order or decree, to examine the merits of the case if sufficiently shown by the pleadings and the record and upon deciding them in favor of the defendant to dismiss the bill and save both parties the needless expense of further prosecution of the suit. . . ."

Petitioners admit (Petition p. 13) that, although the federal pre-emption question had not then been decided by this Honorable Court, that the Indiana Supreme Court could have made a final determination on that issue because it

involved no development of evidence but was simply a question of law. However, taking into account that the Indiana Supreme Court took cognizance of and accepted at face value the Petitioners' statements and evidence that they had made great technological advancements in railroading since the enactment of the 1937 Indiana Full Crew Law, the other questions of constitutionality raised by the Petitioners, for practical purposes, were basically questions of law.

If a state court cannot, without violating the due process of law clause of the Fourteenth Amendment, at the request of the moving party and upon the basis of affidavits and counter-affidavits, make a final determination, then it may be questioned whether the Summary Judgment Procedure of Federal Courts, provided by Rule 56 of Rules of Civil Procedure, may not also violate the due process of law clause of the Fifth Amendment which provides a comparable protection with respect to the application of federal power. In substance and effect, the decision of the Indiana courts upon Petitioners' claims of unconstitutionality were substantially similar to a ruling on a Motion for a Summary Judgment.

Moreover, Petitioners are now asserting that the Indiana Supreme Court erred in having done the very thing requested of it by them, making a decision of the case upon the merits. Simply stated, counsel may not invite error and then complain of it. *Capella, et al. v. Zurich General Acc. Liability Insurance Co., et al.* (1952), 194 F. 2nd 558.

VI

This is not a situation in which the review of a newly enacted statute was involved, which either had not yet gone

into effect or had just recently become operative. It is significant that as of February 3, 1964, the date upon which the trial court issued its temporary injunction, the Indiana Full Crew Law under attack had been in effect in the State of Indiana for a period of twenty-seven years. Moreover, legislation believed to be substantially indistinguishable from that here involved and legislation of other states quite similar to that of Indiana had been ruled to be constitutional by this Honorable Court in such cases as *Missouri, Pacific Railway Company v. Norwood* (1931), 283 U.S. 249 and other similar cases. Petitioners' attack upon the law and their evidence submitted to the trial court were not upon the single issue of federal pre-emption. The record discloses that other bases of unconstitutionality were urged and the great bulk of the evidence submitted was directed toward the attempt to sustain Petitioners' claims of unconstitutionality upon bases other than the federal pre-emption theory.

Because the exercise of the police power of a state to enact such legislation had long ago been upheld, and since the trial court did not expressly base its action in granting the temporary injunction upon the federal pre-emption question, it is fair to assume that the trial court must have considered evidence on all constitutional issues and thus made its determination upon the merits of the case and the consideration of all the evidence presented by the Petitioners.

Unquestionably the Petitioners intended for this evidence to be considered by the trial court in determining the merits of the case at that time, for if their intention was simply to obtain a temporary injunction on the theory that Public Law 88-108 had pre-empted the state law, they would not

have felt it necessary to have produced the voluminous record made in the trial court upon the other constitutional claims made by them. Thus, the Indiana Supreme Court was justified in assuming that the trial court had based its action in granting the temporary injunction upon all of the claims of unconstitutionality, since the lower court did not limit its action to the single basis of claimed federal pre-emption.

CONCLUSION

This case is not like that of *Chicago, Rock Island and Pacific Railroad Co. v. Hardin* (1965), 239 F. Supp. 1, wherein the three-judge federal court based its decision upon the single issue of federal pre-emption, which decision was reversed by this Honorable Court on January 31, 1966 in *Brotherhood of Locomotive Engineers v. Chicago, R. I. & P. R. Co.*, 382 U.S. 423. Instead, because this Honorable Court had decided the federal pre-emption question prior to the issuance of the May 19, 1966 opinion of the Indiana Supreme Court, said state court, because of the evidence presented and at the request of the Petitioners, felt justified in determining the other issues of constitutionality of the Indiana Statute on the merits.

The Respondents believe that there is no substantial basis upon which to remand this case to the Indiana Supreme Court and the trial court either to decide the constitutional issues raised or to accord the Petitioners more time and further opportunity in which to submit additional evidence on the merits. Since Petitioners have waived their right to now contest the legal conclusions reached by the Indiana Supreme Court upon the record made by them, it would seem to the Respondents that the narrow question

relating to their claimed right to a further hearing can only be considered to be insubstantial under the circumstances.

WHEREFORE, for each of the foregoing reasons, it is respectfully submitted that the "Petition for Writ of Certiorari to the Supreme Court of Indiana" should be denied.

Respectfully submitted,

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